Dinesh Kanavaji a/l Kanawagi v Ragumaren a/l N Gopal (Malaysian Bar, intervener) and another cases

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NOS 17–45–07 OF 2012 & 17–47–08 OF 2012
ZALEHA YUSOF J
30 APRIL 2013

Legal profession — Disciplinary proceedings — Disciplinary Board/Committee — Appeal — Legal firm represented orang asli beneficiaries in claim regarding compensation for acquisition of ancestral land — Judgment obtained against Johor State Government — Compensation monies paid out to legal firm but not given to orang asli beneficiaries — Complaint by another advocate and solicitor — Advocates and solicitors involved in representation of orang asli beneficiaries struck off rolls of advocates and solicitors — Whether respondent was complainant under Legal Profession Act 1976 — Whether proceedings before Disciplinary Committee properly conducted

In these consolidated appeals, the partners of Messrs Khana & Co ('Khana & Co'), Kanawagi and Dinesh ('the appellants') appealed against the decision of the Advocates and Solicitors Disciplinary Board ('DB') in striking them off the rolls of the advocates and solicitors. The complaint was on behalf of orang asli beneficiaries who were beneficiaries of the Lembah Linggui Valley trust fund ('trust fund'). Khana & Co had represented the *orang asli* beneficiaries in a claim regarding compensation for the acquisition of their ancestral land and had obtained judgment against the Johor State Government and subsequently, a total sum of RM38.5m ('the compensation monies') was paid out to Khana & Co as one of the trustees. However, the *orang asli* beneficiaries claimed that they did not receive the compensation monies and there was no financial information on it. On behalf of the *orang asli* beneficiaries, the respondent sought an interim relief against Kanawagi and Khana & Co for breach of trust and constructive trust in request for the compensation monies. The interim relief granted suspended Kanawagi as trustee of the trust fund; and restrained the appellants from dissipating the trust assets and the judgment sum. The respondent then complained to the disciplinary board ('DB') against the appellants pertaining to withdrawal and unlawful use of RM7m of the trust fund, which amount was allegedly used for the appellants benefit and enrichment and not for the benefit of the *orang asli*. The disciplinary committee heard the complaint and recommended that the appellants be struck off the Rolls. The recommendation was affirmed by the DB. Hence, the present appeal. The issues raised for the court's determination were whether the parties could file affidavits in this appeal; whether the respondent was a complainant under the Legal Profession Act 1976 ('the Act'); whether the

appellants could be subjected to disciplinary proceedings for action of conduct not in capacity as advocates and solicitors; and whether the proceedings before the DC was properly conducted in accordance with the procedure set out in the Act.

Held, dismissing the appeals:

(1) Section 103E(4) of the , inter alia, provides that the appeal should be by way of an originating motion setting out the ground of appeal supported by affidavit. This would be different from appeals to the High Court from subordinate courts where no affidavit would be required. When an affidavit is filed, of course other parties must be given the right to answer it or clarify. There was no reason why the parties could not exchange affidavits after the appellants had filed their affidavit in support, especially when the parties felt the need to clarify on certain points. The parties could not be stopped from exchanging affidavits, after the appellants had filed their affidavit in support. There was nothing in the Act which prohibited them from doing so (see paras 15–16).

(2) Rule 3(1) of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the LPR') clearly stated that a complaint should be be made by the complainant or his solicitor. In this particular case, the respondent was clearly the complainant. The law does not prohibit the respondent from being the complainant and he was indeed the complainant for the purpose of r 3(1) of the LPR. Even the Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970 referred to an advocate and solicitor who had made a complaint as a complainant (see paras 19–20).

(3) Section 94(3) of the Act clearly stated that the DB had the power to strike off the roll of its member for misconduct in a professional capacity or otherwise. As advocates and solicitors, the appellant could not divorce their position as such from their personal dealings. It was the DB's role to ensure and maintain public confidence in the trustworthiness of all members of the legal profession. The ethics of the profession applied to all members whether in their capacity as advocates and solicitors or not (see para 23).

(4) There was nothing that suggested that the appellants had requested for the opportunity to cross-examine the respondent, and that the request was wrongfully disallowed by the DC. In fact, the respondent was indeed cross-examined. In any event, the appellants were not lay persons. They were advocates and solicitors (see para 28).

(5) The DB and the Malaysian Bar as a whole, owed a duty to the public and in this case the less educated and less fortunate part of the Malaysian community ie the *orang asli*. These statutory bodies should not

compromise the interest of the public and the interest of the profession over and above that of the appellants. The DC and the DB had properly considered the facts, the evidence, both from documents and oral from the parties before them and had come to a correct and proper conclusion and decision in accordance with the law. The DC had the benefit of the voluminous documents before them which clearly revealed the appellants' impropriety (see para 31).

[Bahasa Malaysia summary

Dalam rayuan disatukan, rakan kongsi Tetuan Khana & Co ('Khana & Co'), Kanawagi dan Dinesh ('perayu-perayu') mengemukakan rayuan terhadap keputusan Lembaga Tatatertib Peguambela dan Peguamcara ('LT') dalam menggugurkan mereka dari rolls peguambela dan peguamcara. Aduan itu adalah bagi pihak benefisiari orang asli yang merupakan penerima Dana Amanah Lembah Linggui Valley ('dana amanah'). Khana & Co telah mewakili waris orang asli dalam tuntutan mengenai pampasan bagi pengambilan tanah nenek moyang mereka dan telah memperolehi perintah terhadap Kerajaan Negeri Johor dan kemudiannya, sejumlah RM38.5m ('wang pampasan') telah dibayar untuk Khana & Co sebagai seorang daripada pemegang amanah. Walau bagaimanapun, ahli waris orang asli mendakwa mereka tidak menerima wang pampasan dan tidak ada maklumat kewangan di atasnya. Bagi pihak waris orang asli, responden meminta relief interim terhadap Kanawagi dan Khana & Co kerana pecah amanah dan amanah konstruktif dalam permintaan untuk wang pampasan. Pelepasan interim diberikan Kanawagi digantung sebagai pemegang amanah kumpulan wang itu; dan menghalang perayu-perayu daripada melesapkan aset amanah dan jumlah wang penghakiman. Responden kemudian mengadu kepada lembaga tatatertib ('LT') terhadap perayu-perayu berkaitan dengan pengeluaran dan penggunaan secara tidak sah sebanyak RM7m dana amanah itu, yang amaunnya didakwa digunakan untuk manfaat dan pengayaan perayu-perayu dan bukan untuk manfaat orang asli. Jawatankuasa tatatertib (JT) mendengar aduan itu dan mengesyorkan bahawa perayu-perayu disingkirkan dari Rolls. Syor tersebut telah disahkan oleh LT. Oleh itu, rayuan ini. Isu-isu yang dibangkitkan bagi penentuan mahkamah adalah sama ada pihak-pihak boleh memfailkan afidavit dalam rayuan ini; sama ada responden adalah pengadu di bawah Akta Profesion Undang-Undang 1976 ('Akta'); sama ada perayu-perayu boleh dikenakan tindakan disiplin untuk tindakan kelakuan tidak dalam kapasiti sebagai peguambela dan peguamcara; dan sama ada prosiding di hadapan JT adalah betul dijalankan mengikut tatacara yang dinyatakan dalam Akta.

Diadakan, menolak rayuan:

(1) Seksyen 103E(4) Akta, antara lain, memperuntukkan bahawa rayuan itu hendaklah melalui suatu usul pemula yang menyatakan alasan rayuan yang disokong oleh afidavit. Ini akan menjadi berbeza daripada rayuan

kepada Mahkamah Tinggi daripada mahkamah rendah di mana tiada afidavit akan diperlukan. Apabila afidavit difailkan, sudah tentu pihak yang lain mestilah diberi hak untuk menjawab atau memberi penjelasan. Tidak ada sebab mengapa pihak-pihak tidak boleh bertukar-tukar afidavit selepas perayu-perayu telah memfailkan afidavit sokongan mereka, terutama apabila pihak-pihak merasakan keperluan untuk menjelaskan perkara-perkara tertentu. Pihak-pihak tidak boleh dihentikan dari bertukar-tukar afidavit, selepas perayu-perayu telah memfailkan afidavit sokongan mereka. Tiada apa-apa dalam Akta yang melarang mereka daripada berbuat demikian (lihat perenggan 15–16).

(2) Kaedah 3(1) Kaedah Profesion Undang-Undang (Prosiding Tatatertib) (Tribunal dan Jawatankuasa Tatatertib Penyiasat) 1994 ('KPUU') dengan jelas menyatakan bahawa aduan perlu dibuat oleh pengadu atau peguamcaranya. Dalam kes ini, responden jelas adalah pengadu. Undang-undang tidak melarang responden daripada menjadi pengadu dan dia sememangnya pengadu bagi maksud kaedah 3(1) LPR. Malah Kaedah-Kaedah Prosedur Peguambela dan Peguamcara (Siasatan Tatatertib) 1970 merujuk kepada seorang peguambela dan peguamcara yang telah membuat aduan sebagai pengadu (lihat perenggan 19–20).

(3) Seksyen 94(3) Akta menyatakan dengan jelas bahawa LT mempunyai kuasa untuk menggugurkan daripada daftar ahli untuk salah laku dalam kapasiti profesional atau sebaliknya. Sebagai peguambela dan peguamcara, perayu tidak boleh menceraikan kedudukan mereka seperti itu daripada urusan peribadi mereka. Ia adalah peranan LT bagi memastikan dan mengekalkan keyakinan orang ramai terhadap kebolehpercayaan semua ahli-ahli profesion undang-undang. Etika profesion adalah terpakai kepada semua ahli sama ada dalam kapasiti mereka sebagai peguambela dan peguamcara atau tidak (lihat perenggan 23).

(4) Tiada apa yang mencadangkan bahawa perayu-perayu telah meminta peluang untuk memeriksa balas responden, dan bahawa permintaan itu telah secara salah tidak dibenarkan oleh pihak JT. Malah, responden sememangnya diperiksa balas. Dalam hal apapun, perayu-perayu bukanlah orang awam. Mereka adalah peguambela dan peguamcara (lihat perenggan 28).

(5) LT dan Badan Peguam Malaysia secara keseluruhan, berhutang kewajipan kepada orang ramai dan dalam kes ini mereka yang kurang berpelajaran dan kurang bernasib baik dalam masyarakat Malaysia iaitu orang asli. Badan-badan berkanun tidak sepatutnya menjejaskan kepentingan awam dan kepentingan profesion melebihi dan mengatasi perayu-perayu. Jawatankuasa tatatertib dan LT telah dengan betul mempertimbangkan fakta, keterangan, kedua-duanya dari dokumen dan lisan daripada pihak-pihak di hadapan mereka dan telah membuat

kesimpulan yang betul dan wajar dan keputusan selaras dengan undang-undang. Jawatankuasa tatatertib mendapat manfaat dari dokumen-dokumen yang panjang lebar di hadapan mereka yang dengan jelas menunjukkan ketidakpatutan perayu-perayu (lihat perenggan 31).] A

Notes B

For cases on disciplinary board/committee, see 9 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1490–1493.

Cases referred to

Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah, Returning Officer & Ors [2000] 6 MLJ 98, HC (refd) C

Gana Muthusamy v LM Ong & Co [1998] 3 MLJ 341; [1998] 4 CLJ 878, CA (refd)

Gopalan Nair, Re [1993] 1 SLR 375, HC (refd)

Keith Sellar v Lee Kwang Tennakoon v Lee Kwang [1980] 2 MLJ 191, FC (refd) D

Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor [2012] 2 MLJ 8, FC (distd)

Law Society of Singapore v Heng Guan Hong Geoffrey [2000] 1 SLR 361, HC (refd) E

PP v Karpal Singh [2002] 2 MLJ 657, HC (refd)

Vandervell Trustees Ltd v White and others [1970] 3 All ER 16, HL (refd)

Weare, A Solicitor, Re [1893] 2 QB 439, CA (refd)

Legislation referred to F

Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970 r 2

Legal Profession Act 1976 ss 94(3), 103E(4), (5)

Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 rr 3(1), 23, 24

Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994 rr 3, 4, 5, 6 G

Jagjit Singh (Manjeet Singh Dhillion & Shopna Rana Malakar with him) (Shopna Rani Malakar & Co) for the appellant.

Ragumeran a/l N Gopal (G Ragumaren & Co) for the respondent.

Lambert Rasa-Ratnam (Hoi Jack S'ng with him) (Lee Hishamuddin Allen & Gledhill) for the intervener. H

Zaleha Yusof J:

I

[1] These two cases were consolidated by way of a court order dated 17 January 2013. The cases pertain appeals by lawyers Kanawagi a/l Seperumaniam ('Kanawagi') and Dinesh Kanavaji a/l Kanawagi ('Dinesh') against the decision of the Advocates and Solicitors Disciplinary Board ('DB')

dated 7 July 2012, striking them off the Rolls of Advocates And Solicitors.

BACKGROUND FACTS

[2] Kanawagi is the father of Dinesh and both were then partners of Messrs Khana & Co (Khana & Co).

[3] The respondent is the complainant in the disciplinary proceedings taken by the DB against Kanawagi and Dinesh (the appellants). The complaint was made by the respondent on behalf one Saling bin Lau Bee Chiang, an *orang asli* from Kota Tinggi Johor, a beneficiary of the Lembah Linggui Valley Trust Fund ('trust fund').

[4] Saling and other *orang asli* from three villages had on 5 June 2000 obtained judgment against the Johor State Government which was ordered to pay compensation for the acquisition of their ancestral land. Khana & Co were the solicitors representing the said *orang asli* (the beneficiaries) in the claim regarding the compensation. Pursuant to that judgment, a total sum of RM38.5m was paid out to Khana & Co by the Johor State Government.

[5] In 2005, the respondent was appointed to represent the *orang asli* who alleged that although they did receive some monies from the trust fund, they could not obtain any details nor any correct financial information from the trustees which included Kanawagi with regards to the compensation monies. The respondent then, on their instructions, for and on behalf of these *orang asli*s filed a suit in the Johor Bahru High Court ('the Saling Suit') against, inter alia, Kanawagi and Khana & Co for breach of trust and constructive trust in request of the compensation monies. The relief sought, inter alia, are as follows:

(a) the explanation for the sum of RM16,554,111.92 taken from trust monies as alleged fees and expenses;

(b) the status and explanation to the balance of RM22m; and

(c) the status and accounts of the accrued interest on the RM22m.

[6] The learned Vernon Ong JC (as he then was) had granted the *orang asli* interim relief as follows:

(a) suspension of Kanawagi as trustee of the trust fund;

(b) to restrain the defendants (Kanawagi, Khana & Co) from dissipating the trust assets and the judgment sum; and

(c) to forthwith appoint a receiver & manager ('R&M') to manage the trust and to investigate into the matters pertaining to the compensation monies.

[7] The appellants' appeal against the interim relief was dismissed by the Court of Appeal and their leave application at the Federal Court was withdrawn at the 11th hour. A subsequent application to remove the receiver and manager was also dismissed by the High Court as well as the Court of Appeal.

[8] On 7 March 2011, the respondent lodged the complaint with the DB on behalf of Saling against the appellants and two others. The complaint pertains to the withdrawal and unlawful use of the RM7m of the trust fund monies, which amount was allegedly used for the appellants benefit and enrichment and not for the benefit of the *orang asli*. Briefly the complaint states:

(a) Kanawagi unlawfully allowed the release of the sum of RM7m;

(b) both appellants unlawfully entered into a self-dealing arrangement not for the benefit of the trust fund or the beneficiaries of the trust fund;

(c) both appellants unlawfully utilised the sum of RM7m (which Kanawagi claimed was used to purchase the condominiums) to increase the paid up capital of Virgin Properties Sdn Bhd ('VPSB'), in which both appellants are shareholders, holding about 49% of its shares and Dinesh is a director; and

(d) as advocates and solicitors, both appellants failed to discharge their duties with honesty, ethics and responsibility.

[9] The complaint in (a) is essentially based on the judgment of Vernon Ong JC (as he then was) which was affirmed by the Court of Appeal. The complaints in (b) and (c) primarily rely on the reports of the R&M which was accepted in the judgment affirmed by the Court of Appeal. The complaints are that:

(a) the sum of RM7m purportedly used for the purchase of the condominiums was in fact utilised by VPSB to increase its paid-up share capital from RM30,000 to RM7,030,000; and

(b) at some point later, a sum of RM6,999,990 left the account of VPSB as loans to its directors.

[10] in their joint letter of explanation as shown at pp 329–344 of the record of appeal, the appellant claimed, inter alia:

(a) Kanawagi was acting in his capacity as a trustee, and not as an advocate and solicitor, within the powers conferred on him under the trust deed and cannot therefore be cited for misconduct; and

(b) Dinesh was acting in his personal capacity as a shareholder and director of VPSB, and not as an advocate and solicitor, and cannot therefore be cited

as misconduct. He is not a trustee and therefore cannot be said to have been involved in a self-dealing arrangement. Even if he is a trustee, the trust deed allows the trustees to act notwithstanding personal interest;

[11] The disciplinary committee (DC) heard the complaint on 25 April 2012 and in their report dated 4 May 2012 as shown at pp 634–635 of the record of appeal, had decided as follows:

> After hearing the arguments from the complainant and the respondents and having read the complaint and the replies and having considered and studied the Johor Bahru High Court judgment and having read the voluminous facts and exhibits disclosed in the complaint, the committee decides as follows:
>
> (a) the four respondents' contention that the Director of the Disciplinary Board shall not register the complaint in the registrar book on the ground that the complaint must be signed by the complainant himself ie Saling Bin Lam Bee Chiang and not by his solicitor is groundless. Pursuant to the Legal Profession (Disciplinary Procedure)(Investigating Tribunal and Disciplinary Committee Rules, 1994 Rule 3 (1), a complaint can be made by a complainant or his solicitor. And as the complaint is made by the solicitor on behalf of the complainant, the solicitor in our view can sign on behalf of the complainant. We agree with the complainant's explanation; and
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> (b) The one respondent's (Kanawagi) contention that the complaint against him for misconduct as advocate & solicitor should not be dealt with by the Disciplinary Board because he acted in his capacity as trustee and not as an advocate and solicitor is in our opinion not tenable by virtue of his standing and position as and advocate and solicitor who also acted for the 52 *orang asli* in their compensation claim against the Johor State Government.
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> The first respondent (Kanawagi) and his law firm M/s Khana & Co, the defendants in the Johor Bahru High Court Civil Suit, were found to have acted against the interests of the complainant and 77 others (the plaintiffs in the suit) as held by the Johor Bahru High Court. By acting against the interest of their clients, they are in breach of professional misconduct.
>
> There is valid and sufficient merit in the complaint against the first and second respondents (Kanawagi and Dinesh). Both cannot divorce their standing as advocates and solicitors and their personal dealings. The committee took cognisance of his Lordship's conclusion in summing up his judgment on the serious misconduct of both respondents who acted in their professional and personal dealings unbefitting of advocates and solicitors pertaining to the rust and the trust property.

[12] The DCs recommendation that the appellants be struck off the Rolls were affirmed by the DB, hence this appeal.

ISSUES AND DECISION

Whether parties can file affidavits in this appeal

[13] This issue was raised by learned counsel for Dinesh who urged the court to reject all affidavits filed including of his client on the grounds that procedurewise they were defective as appeal record had already been filed and those affidavits were not part of the appeal record. He cited the decision of Federal Court in *Lau Keen Fai v Lim Ban Kay @ Lim Chiau Boon & Anor* [2012] 2 MLJ 8 at p 15 para 13, House of Lords' decision in *Vandervell Trustees Ltd v White & Other* [1970] 3 All ER 16 at p 26, para g; and the election court case of *Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah, Returning Officer & Ors* [2000] 6 MLJ 98 at p 107 para E–H; and submits that where a special provision is made in a statute, that special provision excludes the operation in the general law. He also submits that looking at rr 3, 4, 5 and 10 of the Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994 ('appeal rules'), the rules of court will only apply when there is no provision in the appeal rules and since the appeal rules have provided for the filing of appeal record, what parties should do is to file an application to file supplementary record and not affidavits.

[14] I have no quarrel with the proposition that where a special proposition is in a statute, that special provision excludes the operation in the general law. However, with due respect, the case of *Lau Keen Fai* was decided based on the issue of whether the applicant's notice of appeal to the Federal Court was irregular since no leave of the Federal Court was first obtained. And the Federal Court decided that the words of s 103E(5) of the Legal Profession Act (Act 166) are clear and should be given their plain meaning that there was no requirement for the appellant to obtain leave to proceed with his appeal before the Federal Court. Whereas, in this instance, the issue is whether parties can file affidavit in this appeal.

[15] Section 103E(4) of Act 166, inter alia, provides that the appeal before the High Court judge shall be by way of an originating motion setting out the ground of appeal supported by affidavit. This is different from appeals to the High Court from the subordinate courts where no affidavit is required to be filed. In my opinion, when an affidavit is filed, of course other parties must be given the right to answer it or clarify. Therefore, I do not see any reason why parties cannot exchange affidavits after appellants had filed their affidavit in support, especially when parties feel the need to clarify on certain points.

[16] So my answer on this issue is that, parties cannot be stopped from exchanging affidavits, after the appellants had filed their affidavit in support.

There is nothing in Act 166 which prohibits them from doing so.

Whether the respondent is a complainant under Act 166

[17] It is the appellants' contention that the complainant should be saling and not the respondent. They argue, to name the respondent as the complainant is in breach of r 2 of the Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970 (PU (A)232/1970) and r 2 of the Legal Profession (Disciplinary Proceedings)(lnvestigating Tribunal and Disciplinary Committee) Rules 1994 (PU (A) 189/1994). They argue, a solicitor cannot step into the shoes of the complainant and testify on behalf of the complainant. The respondent, according to the appellant, has no personal knowledge of the issues raised in the complaints and therefore his entire testimony before the DC was based on hearsay. By holding that the complaint can be made by a complainant or his solicitor, the DC was in error because the physical lodging or making of the complaint must be differentiated with the actual evidence being given before the DC.

[18] PU(A)232/1970 defines 'the complainant' as 'the person including an Advocate and Solicitor, who has made any complaint to the appropriate local Bar Committee under Act 166' PU (A) 189/1994 defines 'complainant' as 'the person who has made a complaint, whether personally or through his solicitor, and includes the Bar Council and a State Bar Committee.

[19] Rule 3(1) of PU(A)189/1994 clearly says that a complaint shall be made by the complainant or his solicitor. In this particular case, looking at the letter of complaint as shown at pp 14–35 of the record of appeal Vol 1 and the respondent's response as shown at pp 570–579 of the record of appeal Vol 3, the respondent is clearly the complainant.

[20] To me, whether PU(A) 232/1970 or PU(A) 189/1994, the law does not prohibit the respondent from being the complainant and he is indeed the complainant for the purpose of r 3(1) of PU(A)189/1994. Even PU(A)232/1970 refers to an advocate and solicitor who has made a complaint as a complainant(as in its definition of 'complaint'). Hence, my answer to this second issue is in the affirmative.

Whether the appellants can be subjected to disciplinary proceedings for action of conduct not in capacity as advocates and solicitor

[21] It is the appellants' argument that they cannot be subjected to disciplinary proceedings as the complaints against them do not relate to their acts or conduct as advocates and solicitors, but as trustee under the trust deed, and director and shareholders of VPSB.

[22] On this, learned counsel for the intervener had referred to various authorities ie *Public Prosecutor v Karpal Singh* [2002] 2 MLJ 657, *Re Gopalan Nair* [1993] 1 SLR 375, *Law Society of Singapore v Heng Guan Hong Geoffrey* [2000] 1 SLR 361 and *Re Weare, A Solicitor* [1893] 2 QB 439; in which the court was of the view that an advocate and solicitor may be disciplined even though the conduct or act in question has nothing to do with his character or action as an advocate and solicitor.

[23] I totally agree with the intervener's argument, what with s 94(3) of Act 166 which clearly states that the DB has the power to strike off the Rolls of its member for misconduct in a professional capacity or otherwise. As advocates and solicitors, the appellant cannot divorce their position as such from their personal dealings.

[24] Although the DB had referred to the decision of Vernon JC (as he then was) which was only interlocutory, but the judgment of the learned judge clearly shows that the learned JC had put his mind to the unrebutted facts and evidence and also the unrebutted findings of the court appointed receiver and manager.

[25] To me, it is the DB role to ensure and maintain public confidence in the trustworthiness of all members of the legal profession. The ethics of the profession applies to all members whether in their capacity as advocates and solicitors or not.

Whether the proceeding before the DC was properly conducted in accordance with the procedure set out in Act 166, the requirement of due process and the rules of natural justice

[26] It is the appellants' arguments that the DC had failed to make a record of evidence given before it and had failed to give the appellants an opportunity to cross-examine the respondent; in breach of r 23 and 24 of PU(A) 189/1994. And that the DC did not properly conduct its own investigation of the complaint but merely adopted the judgment of Vernon JC (as he then was).

[27] However, with due respect I disagree with this contention. Exhibit RG1 clearly shows that the DC did make a record of the evidence given before it.

[28] There is nothing in the appellants' affidavits filed here or the notes of proceedings to suggest that the appellants had requested for the opportunity to cross-examine the respondent, and that the request was wrongfully disallowed by the DC. In fact the notes of proceedings show that the respondent was indeed cross-examined. In any event, the appellants are not lay persons. They

A are advocates and solicitors. If it is true that the DC proceedings was not properly conducted, why did not they complain before the DB made its order two months after the recommendation of the DC?

[29] I am also of the view that there is nothing wrong with the DC relying on
B the judgment of Vernon JC. It will be noted that the judgment of Vernon JC was exhibited to the letter of complaint. The appellants however chose not to address nor deal with the judgment of Vernon JC in their written explanation. It is therefore wrong to say that the DC merely adopted the judgment in arriving at its findings and recommendation. From the report of the DC as
C shown at pp 628–636 of the record of appeal, Vol 3, its findings and recommendation were made after considering the arguments, the complaint and replies, the judgment of the learned JC, and the voluminous facts and exhibits. In the circumstance, I agree with the respondent and the intervener, that the suggestion that the DC did not properly investigate the complaint is with respect wholly unfounded.

D

CONCLUSION

[30] As decided by the Court of Appeal in *Gana Muthusamy v LM Ong & Co* [1998] 3 MLJ 341; [1998] 4 CLJ 878 and the Federal Court in *Keith Sellar v*
E *Lee Kwang* [1980] 2 MLJ 198, as a general rule, the policy of the courts is not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession.

F **[31]** The DB and the Malaysian Bar as a whole owe a duty to the public and in this case the less educated and less fortunate part of the Malaysian community ie the *orang asli*. These statutory bodies should not compromise the interest of the public and the interest of the profession over and above that of the appellants. I am also of the view that the DC and the DB have properly
G considered the facts, the evidence, both from documents and oral from the parties before them and have come to a correct and proper conclusion and decision in accordance with the law. The DC had the benefit of the voluminous documents before them which clearly revealed the appellants' impropriety.

H **[32]** In the circumstances, I agree with the respondent's and the intervener's argument as per their written, as well as oral submission. These two appeals are therefore dismissed.

Appeals dismissed.

I

Reported by Afiq Mohamad Noor